

# Divorced and Separated Parents

Following are the frequently asked questions preparers ask about who claims EITC if the parents are divorced or separated.

**Note:** We have placed sections changed by the new due diligence requirements finalized in December 2011 in green.

Preparer Question	IRS Answer
If parents are divorced, may the noncustodial parent claim the dependency exemption and the dependent care credit and the custodial parent claim the EITC?	<p>No. Generally, only one person may claim all the child-related tax benefits for a child, including the dependency exemption, the child tax credit, the dependent care credit, the exclusion for dependent care benefits, head of household filing status, and the EITC. <b>The exception is the special rule for divorced or separated parents or parents who live apart for the last 6 months of the calendar year.</b> Under this special rule, the noncustodial parent may claim the dependency exemption for a child if the custodial parent releases the exemption. Also, the noncustodial parent may claim the child tax credit if the other requirements for the child tax credit are met.</p> <p>Only the custodial <b>parent</b> may claim the dependent care credit. Usually, only the custodial parent may claim the EITC, because the child must meet the residency test for qualifying child, that is, the child must live with the parent for more than six months of the year except for temporary absences. Generally, custody is determined by the number of nights the child slept in the home of the parent or the parent had responsibility for the child for the night. <a href="#">Consult Publication 501, Exemptions, Standard Deduction, and Filing Information for more details and exceptions such as temporary absences.</a></p> <p>Here are the rules for divorced parents as stated in Publication 596:</p> <p>Special rule for divorced or separated parents or parents who live apart. A child will be treated as the qualifying child of his or her noncustodial parent <u>(for purposes of claiming an exemption and the child tax credit,</u></p>

## Divorced and Separated Parents

	<p><u>but not for the EIC</u>) if all of the following apply: The parents:</p> <ul style="list-style-type: none"> <li>• Are divorced or legally separated under a decree of divorce or separate maintenance,</li> <li>• Are separated under a written separation agreement, or</li> <li>• Lived apart at all times during the last 6 months of 2009, whether or not they are or were married.</li> <li>• The child received over half of his or her support for the year from the parents.</li> <li>• The child is in the custody of one or both parents for more than half of 2009.</li> <li>• Either of the following statements is true.</li> </ul> <p>The custodial parent signs Form 8332 or a substantially similar statement that he or she will not claim the child as a dependent for the year, and the noncustodial parent attaches the form or statement to his or her return.</p> <p>If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent may be able to attach certain pages from the decree or agreement instead of Form 8332.</p> <p>A pre-1985 decree of divorce or separate maintenance or written separation agreement that applies to 2009 provides that the noncustodial parent can claim the child as a dependent, and the noncustodial parent provides at least \$600 for support of the child during 2009.</p>
<p>Divorced parents have <b>joint custody</b> of a child and the marital settlement agreement by the court provides for the parents to <b>alternate claiming the child</b> as a dependent. How does this affect the EITC? Is the parent who is entitled to the dependency exemption also entitled to the EITC if the parent's income warrants it?</p>	<p>Under the special rule for divorced or separated parents or parents who live apart at all times during the last 6 months of the calendar year, The noncustodial parent may claim the dependency exemption for a child if the custodial parent releases a claim to exemption. Also, the noncustodial parent may claim the child tax credit for the child if the requirements for the child tax credit are met. Usually, only the custodial parent may claim the EITC, because the child must meet the residency test for</p>

## Divorced and Separated Parents

	<p>qualifying child, that is, the child must live with the parent for more than six months of the year except for temporary absences.</p> <p>Generally, custody is determined by the number of nights the child slept in the home of the parent or the parent had responsibility for the child for that night. <a href="#">Consult Publication 501, Exemptions, Standard Deduction, and Filing Information for more details and exceptions such as temporary absences.</a></p> <p>The parents can only alternate the EITC if they change the pattern of who has <b>physical custody</b>.</p>
<p>I have a divorced client who is a noncustodial parent and who <b>claims the EITC by claiming his son as a qualifying child. The child's mother agrees to allow him to claim the credit because his AGI is higher than that of the mother.</b> Are they doing the right thing?</p>	<p>Your client is probably not properly claiming the EITC. If parents are divorced, the custodial parent may release a claim to exemption for a child, which allows the noncustodial parent to claim the dependency exemption for the child and the child tax credit for the child if the requirements for the child tax credit are met.</p> <p><b>To claim the EITC, the child must have lived with the taxpayer in the United States for more than half of the year except for temporary absences.</b> If this residency requirement is not met, your client may not claim the EITC by claiming his son as a qualifying child.</p>
<p>My question pertains to divorced or never married parents who <b>alternate claiming</b> the dependency exemption and the <b>custodial parent</b> claims the EITC. How can I document my client has the right to claim EITC?</p>	<p>To <b>document the residency requirement for the EITC</b>, refer to <a href="#">Form 886-H-EIC</a>. <a href="#">The form is also available in Spanish</a>. IRS sends this form with audit letters. The forms have information on the documentation IRS accepts to prove Age, Relationship, and Residency.</p> <p>As a preparer, you are not required to review a copy of the documentation in your records, but it is good customer service to let your client know what's needed in case of audit. <b>But, if you do review a document and use the information to determine eligibility or compute the amount of EITC, you must keep a copy.</b></p>

## Divorced and Separated Parents

<p>A husband and wife separate in September of the tax year. The wife moves out and takes the children with her. The separation is not a legal separation. May the wife claim the children for the EITC?</p>	<p>The wife may only claim the EITC if she files a joint return with her husband and they meet all other qualifications.</p> <p>Because the couple is still married and did not live apart for the last six months of the year, she does not qualify for the Head of Household filing status exception for a married person living apart from his or her spouse. <a href="#">See Publication 501, Exemptions, Standard Deduction, and Filing Information</a> for more information on qualifying for the Head of Household filing status while still married.</p> <p>Her choices of filing statuses are Married Filing Jointly or Married Filing Separately. She is not eligible for the EITC if she chooses to file separately.</p>
<p>If a client is legally separated for last seven months of the tax year but the client's divorce is not final until the following February, may the client use the Head of Household filing status and qualify for EITC?</p>	<p>A married taxpayer can be considered unmarried and file as Head of Household if all the following tests are met:</p> <ul style="list-style-type: none"> <li>• Must file a separate return.</li> <li>• Must have provided more than fifty percent of the cost of maintaining a home.</li> <li>• Must not live in the same home as the spouse at any time during the last six months of the year.</li> <li>• The home was the main home of a qualifying child for more than half the year.</li> </ul> <p>Must be able to claim an exemption for the child. However, the taxpayer may meet this test if they are not claiming the exemption for the child because they released the exemption to the other parent under the special rule for divorced or separated parents discussed above.</p>
<p>I heard the IRS will no longer accept a copy of the divorce decree to support the taxpayer's right to claim a dependency exemption for a child. Is this true?</p>	<p>For all divorces final after December 31, 2008, the IRS is no longer accepting a copy of a divorce decree to show who has the right to claim the dependency exemption. You must file Form 8332 or a substantially similar statement with the return or, if you file electronically, with Form 8453.</p> <p>If the divorce decree was dated before</p>

## Divorced and Separated Parents

	January 1, 2009, the IRS may accept certain pages of the divorce decree as a substitute for a Form 8332, if the decree unconditionally provides that the noncustodial parent may take the exemption for a child, the custodial parent signs the decree, and the decree otherwise conforms to the substance of Form 8332.
--	--